

DUNCAN MILLER

IBLA 76-602

Decided December 27, 1976

Appeal from an April 5, 1976, decision of the Wyoming State Office, Bureau of Land Management, requiring the lessee of oil and gas lease W-5428 to file a \$5,000 bond.

Reversed and remanded in part.

1. Regulations: Applicability

Where a regulation is amended in a way that benefits an applicant, the Department may, in the absence of intervening rights of third parties or prejudice to the interests of the United States, apply the amendment to pending cases.

APPEARANCES: Duncan Miller, pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

This appeal is brought from an April 5, 1976, decision of the Wyoming State Office, Bureau of Land Management (BLM), requiring appellant, the lessee of oil and gas lease W-5428, to file a \$5,000 bond. This was a consequence of a determination that a part of the land embraced in the lease is located within the known geological structure of a producing oil or gas field (KGS).

Appellant contends in his statement of reasons for appeal that a bond is not required because the lease is in a unit agreement 1/ and that requiring a bond creates a hardship for the appellant.

1/ The State Office, in a letter to the appellant dated May 4, 1976, indicated that the State Office records do not show that the lease was committed to a unit. Our disposition of this case causes the issue to be irrelevant.

The case file discloses that the subject oil and gas lease was issued to the appellant on a noncompetitive basis with an effective date of May 1, 1967, for a term of 10 years. The State Director, BLM, was notified by a memorandum from the Director, Geological Survey, dated March 16, 1976, that a part of the land encompassed in lease W-5428 was determined to be within the Blue Gap Field KGS effective March 16, 1976.

This report was the basis for the BLM decision advising appellant of the KGS determination, of the consequent increase in the rental rate, and of the requirement that appellant submit a \$5,000 KGS bond under 43 CFR 3104.1(b). The increase in the rental rate was further clarified by means of a letter of May 4, 1976, to appellant in which it was stated that the revised rental would be effective with the lease year commencing May 1, 1977. ^{2/} Appellant has filed this appeal only as to the bond requirement and, hence, the decision below, as clarified by the letter of May 4, 1976, stands as final with respect to the KGS determination and the lease rental.

This Board has previously held that 43 CFR 3104.1(b) requires a bond in the amount of at least twice the \$2 per acre annual rental (but not more than \$10,000) be filed by the lessee when any part of the land embraced in a noncompetitive oil and gas lease is included within the limits of a KGS. Duncan Miller, 20 IBLA 9, 10 (1975). However, this requirement of the regulations has very recently been deleted and, hence, a KGS bond is no longer required of oil and gas lessees. 41 Fed. Reg. 45566 (October 15, 1976).

This raises the issue of whether a decision requiring the lessee to file a KGS bond under a regulation in effect at the time of the decision should be reversed on appeal where the regulations have since been amended to delete the bond requirement.

[1] Where a regulation is amended in a way that benefits an applicant, the Department may, in the absence of intervening rights of third parties or prejudice to the interests of the United States, apply the amendment to pending cases. Norman H. Nielson, 72 I.D. 514, 515-516, A-30417 (November 2, 1965); Henry Offe, 64 I.D. 52, 55-56, A-27408 (March 18, 1957). In the present case, there are no third parties with intervening rights that would be adversely affected by application of the amended regulation to appellant's case. Further, there is no discernible adverse impact on the interests of the United States as a consequence of not requiring a bond which the regulations no longer require.

^{2/} It should be noted that the primary term of the lease expires April 30, 1977, so that the revised rental will not be effective unless the lease is extended.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed to the extent it requires appellant to file a bond pursuant to 43 CFR 3104.1(b) and the case is remanded.

Anne Poindexter Lewis
Administrative Judge

We concur.

Martin Ritvo
Administrative Judge

Newton Frishberg
Chief Administrative Judge

